

the WTO as a global internet governance actor

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situating the WTO in the GI landscape

- **certainly on the GI institutional map**
- **but delineated competences / discourses**
- **less contestation**
- **impact of the WTO rules on actual IG processes**
- **the unlikely but influential GI actor?**

the WTO: basic tenets

- established in 1995; origins in the Bretton-Woods system and the GATT 1947
- 159 members
- regulates trade in goods and services, IP protection, as well as discrete fields, such as agriculture
- further reaching rules based on the principles of non-discrimination
- seeks opening of markets and sets limits to protectionism
- the 'jewel in the crown': the dispute settlement mechanism

IG relevant rules

- **the Information Technology Agreement (ITA):**
 - covers 97% of trade in IT products; zero tariffs
- **GATS rules for telecommunication services:**
 - further reaching commitments
 - *Annex on Telecommunications* and the *Reference Paper*: liberal regime for telecommunication networks and telecom services; competition-like rules
- **GATS rules for computer and related services:**
 - further reaching commitments; low barriers to trade and market access
- **case law evolution**

WTO and digital trade: failed adaptation?

- the *WTO E-Commerce Programme*: great forward oriented thinking >> no action
- no agreement even on basic issues, such as that the WTO rules apply to trade online
- let alone more complex matters, such as **classification**: goods vs. services; telecom vs. audiovisual vs. computer-related services
- some compensation through the case-law
- **venue shopping triggered**

venue shopping (i)

- **direct or indirect solutions found in preferential trade agreements (PTAs)**
- **11 US PTAs since 2002; spillovers of templates for e-commerce provisions in non-US PTAs**
- **emergence of specific trade regime tailored to digital products and services**

venue shopping (ii)

- **trade in services chapters**
 - negative list approach
 - dropping local presence requirements
 - dropping MFN exemptions
 - strengthened transparency
 - domestic regulation
- **e-commerce cooperation pledges + ‘deep’ digital trade rules**
(data and consumer protection; paperless trading; digital signatures)

venue shopping (iii)

- **IP chapters with ever increasing IG relevance**
 - evolution of the templates to include more digital copyright issues, such as rules on the limitations on liability of ISPs or online piracy prevention (e.g. KORUSFTA)
 - increased level of IP protection and enforcement in cyberspace – export of US domestic standards
 - TRIPS → WIPO Internet Treaties → DMCA → PTAs + (ACTA/SOPA/PIPA type of rules)

summing up (i)

- **overall trends discernible**
 - PTAs address the unresolved e-commerce issues under the GATS: digital IP bias; IP chapters copy high domestic standards of protection
 - digital trade not so much about market access but about interfacing domestic regimes, so as to provide interoperability and some certainty
 - **anticipating the grand new trade deals (TTIP and TPP)**
 - **value of international economic law (if not through the WTO) increased for GIG**

summing up (ii)

- **recent trends**
 - new IG related barriers to trade (localization requirements, domestic privacy and IP rules)
 - **digital trade as trigger for WTO reform:**
 - Trade in Services Agreement (TISA)
 - ITA II
 - US-EU common principles for e-commerce
- **trade venues as GIG: less political controversies; bargaining across sectors; asymmetrical power deals**